

Order

Michigan Supreme Court
Lansing, Michigan

November 27, 2007

Clifford W. Taylor,
Chief Justice

134431

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 134431
COA: 266078
Berrien CC: 2005-402405-FH

THOMAS RAY SPANGLER,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the May 22, 2007 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

CAVANAGH and KELLY JJ., would grant leave to appeal.

MARKMAN, J., dissents and states as follows:

I would grant leave to appeal in this case to consider when offense variable (OV) 19 is properly scored. Ten points are scored for OV 19 where the defendant has “interfered with or attempted to interfere with the administration of justice.” MCL 777.49(c). In this case, defendant hid himself and items used in methamphetamine production in a closet when the police arrived at the house to investigate a crime committed by another person. For doing so, he was scored ten points under OV 19. Given that it would be extraordinary for a criminal perpetrator *not* to attempt to hide evidence of his or her crime or to make such crime less detectable, it would seem that OV 19 would almost always be scored under the trial court’s interpretation. Perhaps this is consistent with OV 19, but, if that was the Legislature’s intention, it would seem that it would have simply increased the base level for theft offenses and other criminal offenses involving contraband. Because the guidelines are more than hortatory, and must be construed in the same fashion as any other binding law of this state, I would grant leave to enable a closer review of the Legislature’s intentions. See *People v Barbee*, 470 Mich 283 (2004).



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 27, 2007

Corbin R. Davis

Clerk